In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 274

DONALD PARROTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on April 20, 1970. A petition for rehearing was denied on May 19, 1970. The petition for a writ of certiorari was filed on June 17, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the indictment should have been dismissed because of delays occurring prior and subsequent to its return.

2. Whether criminal proceedings were barred because the Securities and Exchange Commission had conducted parallel civil proceedings which had concluded before indictment.

3. Whether the evidence was sufficient to support Donald Parrott's conviction for conspiracy.

4. Whether the admission of certain letters in evidence requires reversal.

STATEMENT

A 77-count indictment filed on March 10, 1966, in the United States District Court for the Southern District of New York charged Forrest Parrott, his son Donald Parrott, and eight others with conspiracy to violate the mail fraud statute and Sections 5 and 17 of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and 76 substantive counts, all relating to unlawful sales of stock not registered with the Securities and Exchange Commission. Both Forrest and Donald Parrott were tried on the conspiracy count; in addition, Forrest Parrott was tried on twelve substantive counts. The jury convicted both as charged. On October 15, 1969, Forrest Parrott was fined $10,000 and received a suspended sentence of three years' imprisonment with probation for one year; Donald Parrott was fined $1,000, and the imposition of any prison sentence was suspended, with probation for one day.

[1] Five of the co-defendants pleaded guilty prior to trial and three of them (Breitner, Nadich and Levinson) testified for the government. Another co-defendant, Benjamin Cohan, was tried jointly with petitioners and acquitted. The remaining co-defendants have not yet been tried.

The court of appeals affirmed (Pet. App. A). Forrest Parrott, although ostensibly joined in the present petition, died before it was filed. (Pet. 15).

The evidence showed that in 1956 Forrest Parrott and codefendant Alfred Brehmer formed Ampet Corporation, the eventual parent of numerous other corporations (Tr. 636). Of the 5,000 shares of Ampet issued, 3,500 were controlled by Forrest Parrott.[2] Thereafter, Ampet acquired 10,000,000 shares of Uranium Industries, Inc.,[3] a dormant corporation founded by Forrest Parrott in 1954 (Tr. 639, 1559–1560). Brehmer, an accountant, became an officer of Ampet at Forrest Parrott's suggestion, and also resumed accounting work for Uranium Industries (Tr. 636, 640).

In 1960, Forrest and Donald Parrott, then residing in the Denver, Colorado area, renewed their acquaintance with Leland S. Vance, a former neighbor in Oklahoma City, who had moved to Denver. Vance had relatives and friends who held highly responsible positions with the Sinclair Oil Corporation (Tr. 180). He told the Parrotts that he was interested in forming a corporation to conduct his own oil and gas ventures. Forrest Parrott told Vance that he knew of a dormant corporation (Uranium Industries) which could be restored and used to achieve Vance's purposes (Tr. 78). In January, 1961, Vance became president of Uranium Industries, receiving 1,000,000 shares of the stock of that company from Forrest Parrott, who told

[2] The nominal owner of the shares was Forrest Parrott's daughter, who took no part in Ampet's operations (Tr. 638).

[3] Uranium Industries had a total of 10,450,000 shares outstanding (Tr. 639).

him not to worry about control of the corporation (Tr. 80–81). Shortly thereafter, the name of Uranium Industries was changed to Petron.

At its inception Petron had two assets, an inoperative uranium mine in Utah and a waterflood oil project in Oklahoma from which no income was derived (Tr. 119–120, 122) and which had been acquired from another Parrott company, Namsa Oils Ltd. (Tr. 97A, 642–643). In addition, Petron owned an option, purchased from Namsa for 2,000,000 shares, to buy a coal mine in Utah, and another option, purchased from Forrest Parrott for ten dollars, on a gas field in Oklahoma (Tr. 107–108, 123–124).

After three months of operation Vance decided that a quarterly report and financial statement should be prepared and sent to Petron's 150 stockholders (Tr. 98–100). Forrest and Donald Parrott took steps to present an inflated portrait of Petron's financial condition in these statements. In order to raise the amount of cash reflected on the balance sheet, Donald Parrott drew a check on the Namsa Oils account for $25,000, payable to Petron (Gov't. Exh. 73). The check was dated May 8, 1961, and deposited May 11; nevertheless it was included as a current asset on the date of the balance sheet, April 10, 1961 (Tr. 656–657). Forrest Parrott told co-defendant Brehmer, who was responsible for the accounting work, that Namsa would buy $25,000 in debentures to be issued by Petron. The debentures were never issued, although the financial statement described them in detail (Tr. 658–659). The total cash figure, including the advance from Namsa, was stated in the balance sheet as

$26,757.61 (Tr. 656). The inoperative uranium mine, and the unprofitable oil field project were listed at excessive values—the latter at $439,491.89, although its book value was less than $2,800 (Tr. 675–677). The coal mine property was valued at $69,300,000, using an unacceptable and incorrect method of valuation (Tr. 4007–4008). In fact the coal property was never owned by Petron. The price to exercise the option on the property was originally $1,500,000, but after certain assignments of the option by Forrest and Donald Parrott within the myriad Parrott-controlled corporations, the exercise price was increased to $3,150,000, of which $1,650,000 was to be in cash (Tr. 445, 107–115, 427). When Vance inquired how Petron, with its limited cash position, could ever exercise the option, Forrest Parrott referred to a large banking house in the eastern United States, unnamed, which he said would finance the purchase (Tr. 116). The option was never exercised and within a few years the mines were shut down as unprofitable (Tr. 444). The final asset, the option to buy a gas field for $275,000, was valued at $800,000. Once again Forrest Parrott spoke of financing the purchase through the sale of debentures (Tr. 123–125). The gas wells on this property had remained shut for lack of a market. Forrest Parrott told Vance that a pipeline could be constructed to effect a market, but the stated asset value did not reflect the cost of such a pipeline (Tr. 126–128). Moreover, no financing commitments for this or any other Petron project were ever obtained (Tr. 689).

Using the inflated figures, the Parrotts were able to conceal the fact that Petron had suffered a loss of

over $44,000 in the first quarter of 1961, and had an accumulated loss of $174,729.02 (Tr. 692, 1716–1727). Instead, a profit of 57 cents per share was reported, and the quarterly report boasted that Petron would soon be a hundred million dollar company (Tr. 103, 107, Gov't. Exh. 2). All of the figures used in the reports were furnished by Forrest Parrott (Tr. 678, 685–686). The description of the corporate structure in the financial reports, listing five separate departments actively engaged in profitable ventures, was misleading (Tr. 129–130).

Armed with the false financial reports of Petron's condition, Forrest Parrott attempted to create a public market for its shares, none of which had been registered with the Securities and Exchange Commission. He spoke with several over-the-counter stock brokers, primarily in New York City, and made arrangements for them to receive kickbacks for all shares of Petron marketed by them (Tr. 1097–1134). He furnished these brokers with copies of the financial statement which they in turn distributed to potential customers (Tr. 92, 1095, 1176–1180). The brokers also passed on Forrest Parrott's representation that Petron's management was interrelated with Sinclair Oil (Tr. 1099–1100). The stock being sold came from sources controlled by Forrest Parrott (Tr.

One broker who did not share in the kickback scheme nevertheless dealt in Petron shares under an agreement with Forrest Parrott that for each share sold by him, Forrest Parrott would deduct 25 cents from an amount owed by the broker's son to a corporation controlled by Parrott (Tr. 825–826). Under the terms of this agreement the broker was able to reduce the $2,500 loan by approximately $800 (Tr. 836, 861).

252, 256, 261). Its price rose considerably while the brokers aggressively persuaded customers to make purchases. In one two-week period the price advanced from 2⅞ to 6⅛. The proceeds of some sales made during this time were used by Donald Parrott to cover the May 8th check drawn on Nansa Oils Ltd. to inflate the Petron cash position (Tr. 660–666, Gov't. Exh. 263).

ARGUMENT

We have been informed that Forrest Parrott died on May 17, 1970, one month prior to the filing of the instant petition for a writ of certiorari (Pet. 15). The death of Forrest Parrott abates his appeal. *Wickel* v. *Ohio*, 371 U.S. 62; *Stager* v. *United States*, 323 U.S. 338, 346. Accordingly, the government's response will confine itself to the manner in which the issues presented affect Donald Parrott.

I. The claim that the indictment should have been dismissed because of pre-indictment and post-indictment delay has been treated at length in the opinions of the court of appeals (Pet. App. 41–45) and the district court (R. 58, 116).* As the lower courts noted, the incidents underlying the conviction occurred in mid-1961. By March 1962, the Securities and Exchange

*The materials which have been filed with the Clerk, other than the trial transcript, are designated "R." R. 58 contains the pre-trial opinion of Judge Bonsal, dated February 14, 1969, denying petitioner's motion to dismiss. R. 116 contains the transcript of the post-trial opinion delivered orally by Judge Weinfeld (who presided at trial) dated October 8, 1969.

Commission had begun its civil investigation, resulting in a criminal reference report prepared in July 1963. By this time three of the six individuals whom petitioner characterizes as crucial to the defense had died, and another died shortly thereafter (Pet. 12–13): their death at this early stage can hardly serve to support dismissal of the indictment.[6] On at least three occasions in 1964 and 1965 the SEC pressed the United States Attorney's Office for initiation of criminal charges. However, it appears that the Assistants assigned to this complex, time-consuming case were also involved in more urgent matters, involving prosecutions and indictments in cases where the statute of limitations was about to run.[7] Thus, the indictment was not filed until March 1966, following presentation to the grand jury in the latter part of 1965. In the meantime, three related SEC civil investigations had taken place, and a criminal action in the

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[6] Indeed, the evidence at trial shows that Mr. Peavey, Forrest Parrott's lawyer, was incapacitated from a stroke suffered in early 1961, and never resumed his practice thereafter (Tr. 902–904). His role in the incidents giving rise to the criminal offenses could not have been critical.

Moreover, we cannot truly believe that Mr. Bane, whom petitioner terms "one of the foremost experts in the securities field," (Pet. 12), would have testified that Forrest Parrott was not a controlling person behind the use of corporate nominees. As to the other deceased potential witnesses, we note the essentially hearsay nature of much of their proposed testimony.

[7] The Assistant United States Attorneys have filed affidavits containing a chronology of their work schedule for the pertinent period, showing heavy overtime schedules and almost no vacations (U.S. Aff. K, L). *See Dickey v. Florida*, No. 728, O.T. 1969, decided May 25, 1970 (slip opinion, p. 8).

District of Columbia paralleling one of the three had terminated favorably to the Parrotts. *United States v. Parrott*, 248 F. Supp. 196.

Three months after the present indictment was filed Forrest Parrott submitted a motion to dismiss for unnecessary delay, in which he also requested additional time to submit more information. On August 23, 1966, Forrest and Donald Parrott filed motions for discovery. On September 6, 1966, Donald Parrott filed a motion to dismiss, citing as his reasons generally the same matters presented to this Court: that the government had unfairly derived information from its broad discovery powers in civil proceedings before the Securities and Exchange Commission; that crucial witnesses had died; that other witnesses had failing memories; and that he was undergoing great financial and personal hardships. A hearing on the motion for discovery was conducted on September 13, 1966, resulting in a court order, dated September 20, granting some of the matters requested. The hearing on the motions to dismiss was adjourned continuously, first to October 10th, and then to November 7th, January 10, 1967, and February 20, 1967, to enable defense counsel to file supplementary affidavits based upon the discovery materials. On February 20, no affidavits had yet been filed. The Assistant United States Attorney and counsel for both Parrotts then agreed that the case could be marked off the court calendar and would be restored as soon as the Assistant was notified that counsel was prepared to proceed.

On January 10, 1968, the government counsel who eventually served as prosecutor was first assigned responsibility for this case. On several occasions he inquired of defense counsel when the supplementary affidavits would be filed, but received no response. It appears that petitioner Donald Parrott had on at least five occasions instructed his counsel not to file such matters, evidently preferring the status quo (R. 43, p. 8; Exh. B). He so informed the court by letter on October 2, 1968, after government counsel had restored the case to the criminal calendar.

On October 14, 1968, government counsel filed an affidavit detailing the events which had theretofore transpired (R. 43). The government then averred that the original source of all evidence which would be introduced at trial was not from information gathered by the Securities and Exchange Commission in the three related civil litigations in which [illegible] and Donald Parrott were concerned. At a hearing before Judge Bonsal on November 12, 1968, the intention not to use materials gathered from petitioner or his father in the civil proceedings was reiterated (R. 58, p. 67). Judge Bonsal's decision denying several motions, including the motion to dismiss, was filed on February 14, 1969. Further delay ensued because of Donald Parrott's

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Donald Parrott and his original counsel, Mr. Cannie, began to disagree on how to proceed, leading to the attorney filing a motion to the court to be relieved. It was at a hearing on this motion, on March 24, 1969, that Judge Wyatt made the comment cited by petitioner to the effect that this case was a disgrace because it had been delayed so long (Pet. 11, R. 45, p. 5). Judge Wyatt thereafter denied counsel's motion to be relieved of his duties.

conflicts with his counsel and because Forrest Parrott informed the court of his own desire to retain new counsel (R. 47, 48, 49). On the eve of trial, Donald Parrott's counsel filed a motion to suppress statements made by him to the Securities and Exchange Commission. The motion was denied on May 14, 1969 as untimely and without foundation, and because the government has long since stated it would not use the materials. Trial finally occurred in June 1969.

As this chronology illustrates, any delay charged to the government was not deliberate or oppressive. The claims regarding the deceased witnesses are, in the words of Judge Weinfeld, "highly exaggerated" (R. 116, p. 4). Moreover, the case rested in large measure on documents equally available to the government and defense counsel. The suggestion that memories of witnesses were impaired finds no support in the trial transcript. In these circumstances, the denial of the motion to dismiss on grounds of due process, speedy trial, or Fed. R. Crim. P. 48, was justified. *United States* v. *Ewell*, 383 U.S. 116; *United States* v. *Feinberg*, 383 F. 2d 60 (C.A. 2), certiorari denied, 389 U.S. 1044.[9]

2. Petitioner and his father were involved in three contemporaneous investigations by the SEC into possible civil violations of the securities laws. All

[9] *Dickey* v. *Florida*, decided May 25, 1970 (No. 758, O.T. 1969), is clearly distinguishable. That case involved the failure of the State over an 8-year period to make any effort to obtain the defendant from federal custody for trial on State charges, despite repeated demands for such a trial. The Court found no valid reason for the delay and consequent prejudice to the accused.

occurred before the institution of these criminal proceedings. When petitioner was called upon to testify at the civil proceedings he was represented by counsel and informed of his right to remain silent. None of his civil testimony was used in the criminal case.

Petitioner's decision to testify before the Securities and Exchange Commission hearings did not bestow upon him an immunity from criminal prosecution. The government did not represent that criminal prosecution had been ruled out. The SEC hearings were not disguises for securing evidence to be used against petitioner in a prospective criminal trial. Accordingly, the courts below properly ruled that criminal proceedings against petitioner were not barred because of parallel civil proceedings. See *United States* v. *Kordel*, 397 U.S. 1.[10]

3. The evidence detailed in the Statement, *supra*, was ample to support the conviction of petitioner Donald Parrott. He served in his father's enterprises not as a mere errand boy with no responsibility for his acts, but as an active participant in the wrong-

[10] Petitioner relies heavily upon a 1965 decision by Judge Gasch in the District Court for the District of Columbia holding that under the circumstances therein presented, the preference given to civil proceedings, and thereby delaying the criminal case, was prejudicial to the accused. *United States* v. *Parrott*, 248 F. Supp. 196. That case is not necessarily indistinguishable from the situation presented here, where no material prejudice arising from the delay has been established. In any event, Judge Gasch's opinion fails to cite any authority for his ruling and no appellate court has ever adopted it. See *United States* v. *Squeri*, 398 F. 2d 785, 788 (C.A. 2); *United States* v. *Silafani*, 263 F. 2d 408, 414–415 (C.A. 2), certiorari denied, 360 U.S. 918. The government did not concede the correctness of Judge Gasch's ruling in its brief in *Kordel* (No. 87, O.T., 1969, p. 32).

doings. This is well established by the evidence that both Forrest and Donald Parrott executed the signature card authorizing either to sign checks on the Canadian Bank account of Namsa Oils, Ltd. (Tr. 482). In May of 1961, Donald wrote a $25,000 check for Namsa Oils as part of the scheme to inflate the cash position of Petron reflected on the quarterly report, issued before that date. He later arranged for a second check, in the amount of $15,000, to be issued by Namsa for Petron. The checks were covered by the proceeds derived from the sale by Namsa of Petron stock at inflated prices. Donald Parrott then arranged to have Namsa repaid by Petron, which borrowed the funds from a Denver bank, using as collateral a time deposit certificate in the amount of $43,000 drawn to another nominal corporation, United Oil, and signed by Donald Parrott (Tr. 518–519). It is hardly credible that someone in Donald Parrott's position, with responsibility for handling such large sums from the accounts of his father's corporation, would not have the business sense to recognize the purpose for the belated advance to Petron. Moreover, petitioner must have been aware of the manner in which funds were secured to cover the amounts of the checks issued on the Namsa account.

4. At trial, an official of the bank in Denver which had dealings with Forrest and Donald Parrott and some of their nominees was asked to identify nine letters kept by the bank bearing the signatures of either petitioner and the handwritten signature of the nominee, and instructing the bank to guarantee

endorsements written in the signature of the nominee as listed. These letters were not admitted to prove the truth of the matter stated therein; accordingly, any objection based on hearsay is without foundation. See *Phillip* v. *United States*, 356 F. 2d 297 (C.A. 9), certiorari denied *sub nom. Walker* v. *United States*, 384 U.S. 952. Moreover, as the record shows (Tr. 498–501), with one possible exception (Gov't. Exh. 181 B), the objections made by counsel to the admission of the letters were not on the basis now urged—that they had been received but not prepared by the bank, and therefore were not admissible under the federal business records statute, 28 U.S.C. 1732. No objection founded specifically on authenticity of the signatures was raised. In these circumstances, the request by petitioner that this Court invoke its supervisory powers to correct "serious" errors made by the court of appeals in discussing admissibility of the letters is hardly warranted. See *United States* v. *Kelly*, 349 F. 2d 720, 772 (C.A. 2), certiorari denied, 384 U.S. 917.

CONCLUSION

For the reasons stated, it is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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